THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.31172 of 1997

Dated: 13.04.2007

Between:

Engine Valves Limited, Plot Nos.68 to 77,
Industrial Estate, Medchal, rep., by its President.

.....
PETITIONER

AND:

The Authority under Minimum Wages Act and
Deputy Commissioner of Labour, Ranga Reddy
District, Andhra Pradesh and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.31172 of 1997

ORDER:

The first respondent set the petitioner herein *ex parte* on 18.08.1997 in M.W. Case No.2 of 1997. Thereafter, he condoned the delay of 210 days in filing the application for payment of minimum wages and passed an order on 01.11.1997 directing payment of Rs.2.74,482/- with compensation of one time the said amount. Against the order setting him *ex parte,* the petitioner herein filed an application to set aside the *ex parte* order on 19.09.1997, but the authority, by an order dated 01.11.1997, held that since the petition was filed on 20.09.1997, by which time thirty

days time limit had elapsed, the said application could not be entertained.

Sri S.Ravindranath, learned counsel for the petitioner, would refer to Section 20(2) and (3) of the Minimum Wages Act, 1948 (for short "the Act") to contend that in the first place, the authority is required to condone the delay in preferring an application for payment of minimum wages beyond the minimum period of six months, provided the applicant satisfies the authority that he had sufficient cause for not making the application within time, and thereafter, the authority is required to hear the applicant and the employer, give them an opportunity of being heard and only after such enquiry, direct payment of minimum wages. Learned counsel would contend that in the present case, not only did the authority not assign any reasons for condoning the delay in filing the application, but he also did not give the petitioner herein an opportunity of hearing after the delay was condoned and, in haste, passed an order directing payment of minimum wages. Learned counsel would submit that since the mandatory requirements of Section 20(2) and (3) of the Act have been violated, the impugned order was liable to be set aside. Learned counsel would further submit that the first respondent had erroneously held that the petitioner herein had submitted an application to set aside the *ex parte* order on 20.09.1997. Learned counsel would point out the acknowledgement given by the Superintendent of the office of the first respondent on 19.09.1997 to contend that the application to set aside the *ex parte* order was filed before the authority on 19.09.1997 and not on the 20th instant. Learned counsel would contend that, since the date of the order is required to be excluded for the purpose of computing the period of one month, the period of

one month would commence from 19.08.1997 and since the period of one month had expired only on 19.09.1997, the application submitted by the petitioner herein, to set aside the *ex parte* order dated 18.08.1997, was within time.

The learned Government Pleader for Labour, would submit that despite repeated opportunities, the petitioner herein had failed to appear before the authority concerned and that the authority was left with little alternative but to set him *ex parte* and proceed with adjudication of the application on merits. Learned Government Pleader would contend that, since the petitioner had been set

ex parte, the question of providing him an opportunity of being heard after the delay in filing the application is condoned, does not arise. With regards the application filed by the petitioner herein to set aside the *ex parte* order, learned Government Pleader would refer to the averments in the counter affidavit in support of his submission that the application was, in fact, entered in the register on 20.09.1997 and that the endorsement of the Superintendent dated 19.09.1997 was a clear case of manipulation and that no reliance can be placed on the said endorsement. Learned Government Pleader would further contend that even if it is presumed that the petitioner had filed an application on 19.09.1997, and even if the date of the order i.e., 18.08.1997 was to be excluded, the period of one month commencing from 19.08.1997 would expire on the 18th instant and since the petitioner did not submit the application on the 18th, the application was filed beyond the period of one month specified in Section 20(2) and (3) of the Act, and as such the first respondent had rightly dismissed the application.

Before examining the rival contentions, it is necessary to take note of Section 20 of the Act, which reads thus:

> "Claims: (1) The appropriate Government may, by notification in the Official Gazette appoint (any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any) other officer with experience as a Judge of a Civil court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages (or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of Section 13 or of wages at the overtime rate under section 14) to employees employed or paid in that area.
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> (2) (Where an employee has any claim of the nature referred to in sub-section (1)), the employee himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector, or any person acting with the permission of the authority appointed under sub-section (1) may apply to such Authority for a direction under sub-section (3);
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> Provided that every such application shall be presented within six months from the date on which the minimum wages (or other amount) became payable;
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> Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.
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> (3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct:
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> (i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees,

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.. .”

Rule 34 of the Andhra Pradesh Minimum Wages Rules relates to powers of authorities and it reads thus:

“**Appearance of parties**: 1) If an application under sub-section (2) of section 20 or sub-section (1) of Section 21 is entertained, the authority shall serve upon the employer by registered post a notice in Form IX to appear before him on a specified date with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

(2) If the employer or his representative fails to appear on the specified date, the authority may hear and determine the application *ex parte*.

(3) If the applicant or his representative fails to appear on the specified date, the authority may dismiss the application.

(4) An order passed under sub-rule (2) or sub-rule (3) may set aside on sufficient cause being shown by the defaulting party within one month of the date of the said order and the application shall then be reheard after service of notice on the opposite party of the date fixed for rehearing in the manner specified in sub-rule (1).”

Sub-Rule 4 of Rule 34 requires an application to be made within one month from the date of the order.

The question which necessitates examination is whether the authority could have proceeded straight away to pass an order on merits after condoning the delay in filing the application. It is necessary to note that under the first proviso to Section 20(2) of the Act, an application for minimum wages shall be made within six months from the date on which the minimum wages become

payable. It is not in dispute that the application was filed along with an application to condone the delay of 210 days in filing the application. Under the second proviso to section 20(2) of the Act, power is conferred on the authority to admit the application after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making such application within the said period. The only power conferred on the competent authority under Section 20(2) of the Act is to condone the delay in filing the application and then admit the application. Once the application is admitted and is entertained, sub-section (3) of Section 20 of the Act obligates the authority to hear both the applicant and the employer and given them an opportunity of being heard. The hearing contemplated under Sub-section (3) of Section 20 of the Act is after the application is admitted. As noted above, the application is admitted only after the delay in filing the application is condoned. As such, Section 20 of the Act disentitled the competent authority from passing a common order condoning the delay and adjudicating the matter on merits.

Since the first respondent has acted contrary to sub-sections (2) and (3) of Section 20 of the Act, the impugned order is quashed and the matter is remitted to the authority to provide an opportunity of hearing to the petitioner and the applicant and thereafter pass an order on merits in accordance with law.

Since the order dated 01.11.1997, directing the petitioner herein to pay a sum of Rs.2,74,482/- along with the compensation of one time the appeal i.e, a total amount of Rs.5,48,964/-, has now been quashed, it is wholly unnecessary for this Court to go into the question as to whether the application filed by the petitioner herein to set aside the *ex parte* order was within the

period of one month stipulated under Rule 34(4) of the Rules. Since the dispute relates to payment of minimum wages, and the extent of compensation to be paid to the workmen for non-payment of minimum wages, it is necessary that the matter be heard and disposed of expeditiously. The authority shall, after compliance with the requirements of Section 20(2) and (3) of the Act, pass orders in accordance with law, within a period of two months from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs.

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13.04.2007

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